

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

30191

FILE: B-216582 DATE: January 16, 1985
MATTER OF: Serv-Air, Inc.

DIGEST:

1. The failure of a prospective offeror to receive notice of the closing date does not necessitate reopening the solicitation where the agency made a significant effort to obtain competition, a reasonable price can be obtained, and there is no evidence of a deliberate attempt to exclude the firm from competition.
2. The protester has the burden of proving its case and we will not attribute improper motives to procurement personnel on the basis of inference or supposition.

Serv-Air, Inc., protests request for proposals (RFP) DABT51-84-R-0034 issued by the Department of the Army for base operations and maintenance at Fort Bliss, Texas. Serv-Air alleges that improper conduct by Army procurement officials precluded Serv-Air's participation in the competition. We deny the protest.

The Army issued the RFP on March 29, 1984. Proposals were originally due on July 27, 1984, but later extended by several amendments to September 28, 1984. On September 14, the Army considered extending the due date again. Several prospective offerors, including Serv-Air, contacted the Army's procurement office that day to inquire about the RFP and were advised that an extension of the due date was being considered but, if there was to be an extension, it would be confirmed by written amendment.

On September 17, the Army determined that no extension was required. The Army states that it therefore called each of the firms that had been advised on the 14th of the possibility of an extension to confirm that there would be no extension. Other than Serv-Air, all of the firms contacted on the 17th, plus five others, submitted proposals by the September 28 closing date.

030981

Serv-Air disputes the Army's explanation of the September 17 telephone call. In this respect, Serv-Air contends that it was advised that the closing date would be extended indefinitely, as a result of which Serv-Air reassigned its proposal preparation personnel to other activities. Serv-Air states that it did not learn that the September 28 closing date had been confirmed until it again contacted the Army on September 25 regarding the status of the RFP. Serv-Air contends that as a result of receiving the advice as to an extension, it was unable to complete its proposal by the closing date. Serv-Air asserts that the Army's improper advice on September 17 precluded its participation in this procurement. Serv-Air asks that a new closing date be set.

In support of its position, Serv-Air offers affidavits from its employees stating that they were not advised of the reinstatement of the proposal due date and stating Serv-Air's interpretation of the September 17 conversation with Army personnel. On the other hand, the Army submits a statement from a procurement official in which he states that he made the call and apprised Serv-Air that the September 28 closing date would not be extended. We note also that other offerors, which the Army states were advised on September 17 that the closing date would not be extended, did submit proposals by September 28. The record does not provide a basis for reconciling these differences.

We have held that even the failure of a firm to receive a copy of the RFP does not prevent award and require resolicitation where the agency made a significant effort to obtain competition, a reasonable price was obtained, and there was no deliberate attempt to exclude the firm from the competition. Vigilantes, Inc., B-213010, Feb. 8, 1984, 84-1 CPD " 158. Here, Serv-Air contends that, while it did receive the RFP, it did not receive notice of the closing date. The effect is the same as not receiving the RFP in the first place in that Serv-Air has been excluded from the competition.

Serv-Air does not allege that the Army has not made a significant attempt to obtain competition. We note that, having received 12 proposals, it would appear that the Army has, in fact, successfully obtained competition. Serv-Air also does not challenge the ability of the Army to obtain a fair and reasonable price as a result of the competition. Serv-Air alleges only that it did not receive

B-216582

notice confirming the closing date and that the Army procurement officials' failure to transmit that notice was a deliberate attempt to exclude Serv-Air from the competition. As to that allegation, we have held that the protester has the burden of proving its case and we will not attribute improper motives to procurement personnel on the basis of inference or supposition. Granite Diagnostics, Inc., B-211711, June 7, 1983, 83-1 CPD ¶ 620. Since the record contains only Serv-Air's unsupported allegations and the Army's contradictory account of the facts, we conclude that Serv-Air has not carried its burden of proof on this issue. See Bataco Industries, Inc.--Reconsideration, B-212847.2, Apr. 18, 1984, 84-1 CPD ¶ 441.

The protest is denied.

for Raymond E. Fox
Comptroller General
of the United States